



## **Express and Implied Contract Terms NEU guidance for members in England & Wales**

This document provides a basic overview of how the terms forming part of most contracts of employment work.

What are 'express' and 'implied' terms?

Express and implied terms form the basis of every contract of employment and are essentially the rights and duties of both employers and employees in the contract of employment. Some rights and duties are explicit (ie express) and others are silent, but underlie the functioning of the contract (ie implied).

What sorts of terms are normally explicit in a contract of employment?

The sorts of terms normally explicit in a contract of employment are those relating to:

- the job title
- the rate of pay and how often the employee will be paid
- the hours of work
- holidays and holiday pay
- sick pay
- notice pay
- pensions and pension schemes
- collective agreements which directly affect the terms and conditions of employment.

Must express terms be in writing?

Express terms may be written or verbal. However, the law requires certain express terms – namely those highlighted above – to be put in writing and handed to you in the form of a 'written statement of particulars' (refer to the NEU Contract of Employment guidance for more information, see below).

If you are unsure whether your post carries a management responsibility point, or whether you are entitled to join the Teachers' Pension Scheme, you should first refer to the statement of particulars, as the answer is likely to be contained there.

If there is a change to any of the terms in your statement of particulars, your employer should let you know in writing within a month of the change. Any changes to your contract should, in any event, be made with your agreement.

What if my employer changes the terms in my contract without my consent?

If your employer tries to enforce changes to the contract without your agreement it is called 'unilateral variation'. Usually this happens when an employer wants to change the terms of its entire staff or a section of staff, so take advice as soon as possible from the union and insist on collective consultation with the employer.

Your employer may seek to impose contract changes unilaterally by terminating the original contracts of all staff and offering them a new contract including the changes. This is technically a dismissal, and you and your colleagues may have a remedy in law if you qualify to bring an unfair dismissal claim. You must seek prompt advice from the union if this happens because you can be taken to have agreed the changes by inaction.

What if an express term in my contract is capable of more than one meaning?

This is something that often happens, with the employer favouring an interpretation that either imposes duties on the employee or restricts the employee's rights, and the employee favouring an interpretation which does the opposite. The general rule is that if an express term has more than one meaning, it will be given the meaning which least favours the party who drafted it, which in most cases will be the employer.

If implied terms are silent, how do I know what terms are implied into my contract?

Employers do not always spell out every right and duty that forms part of the employment contract. This is because sometimes a right or duty will be obvious. For example, it is obvious that an employee should not act dishonestly in the course of their employment, or that an employer should not act arbitrarily, capriciously or inequitably in relation to the employee. These expectations are implicit in every contract of employment. Other terms are implied because they are needed to make the contract work in the absence of an express term. For example, an implied term may be used to fill a gap where there is no express term on a particular point.

Are there certain terms which are implied in every contract of employment?

Yes, there are. Terms which are imposed either by common law (ie judge-made law) or by statute (ie laws made by Parliament) are deemed to be included in every contract of employment, whether or not the employer and employee intended them to be. Below is a non-exhaustive list of implied terms which are universal:

- mutual trust and confidence
- not to act arbitrarily, capriciously or inequitably
- good faith and fidelity
- not to disclose trade secrets/confidentiality
- to obey reasonable and lawful orders
- to take care of the employer's equipment
- to provide a safe working environment
- to deal promptly with grievances.

There are also rights and duties derived from various employment-related statutes which are too numerous to include in this document.

Can an express term in my contract exclude a term implied by law?

No, it cannot. Terms imposed by law (eg those highlighted above) cannot be excluded from a contract by an express term, although some – not all – may be waived (ie given up) by agreement. Never agree to waive your legal rights without first seeking advice from the union.

What kinds of acts or omissions are likely to breach an implied term?

The following have been held by the courts to breach the implied term of trust and confidence:

- Failure to make a reasonable adjustment required by the Equality Act.
- Failure to notify an employee on maternity leave of a job vacancy for which she would have applied had she known.
- Aggressive attempts to persuade an employee to accept a change in the way he was paid.
- Requiring an employee to move office from one part of England to another on a weekend's notice.
- Failure by an employer to adhere to a grievance procedure.

What should I do if I believe my employer has breached a term in my contract?

If your employer has breached a term in your contract it is likely that your colleagues have been similarly affected. In the first instance, ask your school rep to set up a union meeting so that affected staff can share experiences and agree a course of action. If matters need to be

escalated your rep or, if you don't have one, you or someone nominated to act on behalf of the group, should contact the branch or district for assistance.

If the breach affects only you, seek advice from the NEU Adviceline in England or NEU Cymru in Wales – see details below. Do not act before seeking appropriate advice.

I have heard the term 'custom and practice' used in relation to my contract. What does it mean?

Sometimes workplace entitlements become established rights because they:

- have been followed without exception for a substantial period
- are uninterrupted
- are automatically received
- are expected
- are well known.

It is extremely difficult to argue, however, that a term conferring rights has been implied into your contract of employment through custom and practice. The NEU would prefer, wherever possible, to secure your entitlements by negotiating express terms which confer rights on all the teachers and support staff employed by your employer.

What should I do next?

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2049 1818.

Further contact details may be found at: [neu.org.uk/contact-us](http://neu.org.uk/contact-us)

Further information

NEU guidance, available at: [neu.org.uk](http://neu.org.uk)

Constructive Dismissal

Contract of Employment

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